REMARKS

Claims 1-7, 13, 15, and 26-28 are pending and at issue in the current application. Applicants have amended claims 1, 4, 6, 7, 13, 15, and 26-28. No new matter has been entered by the claim amendments. Support for the amendments made to claims 1 and 28 may be found throughout the specification, including, but not limited to paragraphs [0007] and [0026] and FIGS. 1, 2, 8, and 9. Support for the amendment made to claim 27 may be found at least in paragraph [0031] and FIG. 7. Amendments made to claims 4, 6, 7, 13, 15, and 26, are to correct typographical errors or for consistency with the hereinabove noted amendments.

Claims 1-7, 13, 15, and 26-28 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,733,513. This application and the '513 patent are commonly owned. Applicants submit that the claims as amended traverse the Examiner's non-statutory obviousness-type double patenting rejection. However, to the extent that the Examiner may maintain this rejection, Applicants reserve the right to file a terminal disclaimer upon indication of allowable subject matter in the present case.

Claims 1, 2, 4, 5, 7, 13, 15, and 26-28 stand rejected as anticipated by Beyar et al. US 6127597 ("Beyar"). Claims 1, 2, 4, 5, 7, 13, 15, and 26-28 stand rejected as anticipated by Kaneko et al. US 5344400 ("Kaneko"). Claims 1-7, 13, 15, and 26-28 stand rejected as anticipated by Macoviak et al. US 6585689 ("Macoviak"). Applicants traverse the rejections of claims 1, 2, 4, 5, 7, 13, 15, and 26-28 as anticipated by Beyar or Kaneko. Applicants further traverse the rejections of claims 1-7, 13, 15, and 26-28 as anticipated by Macoviak.

Claim 27 recites a balloon catheter comprising an inflatable balloon substantially comprising at least one vacuum deposited metal. Claim 28 recites a balloon catheter comprising an inflatable balloon coaxially disposed about a catheter member such that an inflation lumen is defined intermediate the catheter member and the inflatable balloon, and wherein the inflatable balloon comprises a inner surface, an outer surface, and a wall thickness therebetween, wherein the wall thickness substantially comprises at least one shape memory metal. None of the cited references discloses an inflatable balloon substantially comprising at least one vacuum deposited metal, as recited by claim 27. Further, none of the cited references discloses an inflatable balloon coaxially disposed about a catheter member such that an inflation lumen is defined intermediate the catheter member and the inflatable balloon, and wherein the inflatable balloon

comprises a inner surface, an outer surface, and a wall thickness therebetween, wherein the wall thickness substantially comprises at least one shape memory metal, as recited by claim 28.

In fact, Beyar discloses an "expandable intramedullar fixture 80, comprising a balloon 82 . . . Balloon 82 can also be made of metal." (Column 26, line 64 – Column 27, line 10). Beyar does not disclose a "vacuum deposited metal," as recited by claim 27. Beyar discloses a "metallic balloon tube" manufactured from Nitinol. (Column 43, lines 36-39). However, referring to FIGS. 6-7D of Beyar, the "metallic balloon tube" is not disclosed to be coaxially disposed about a catheter member such that an inflation lumen is defined intermediate the catheter member and the inflatable balloon, as recited by claim 28.

Kaneko discloses a balloon that "comprises as a construction material thereof either polyarylenesulfide having a good dimensional stability, or a polyarylenesulfide-based polymer alloy modified by blending polyarylenesulfide as a constituent or a main constituent with another resin providing flexibility (elasticity) or copolymerizing with another component providing softness." (Column 4, lines 42-49). Thus, Kaneko does not disclose an inflatable balloon substantially comprising a vacuum deposited metal or a shape memory metal, as required by claims 27 and 28, respectively.

Macoviak discloses an upstream occlusion member 120 and a downstream anchoring member 122, both of which are expandable, inflatable balloons. "Suitable materials for the inflatable balloon upstream occlusion member 120 [downstream anchoring member 122] include flexible polymers and elastomers, which include, but are not limited to, polyvinylchloride, polyurethane, polyethylene, polypropylene, polyamides (nylons), polyesters, latex, silicone, and alloys, copolymers and reinforced composites thereof." (Column 7, lines 28-34 and Column 8, lines 4-10). Thus, Macoviak does not disclose an inflatable balloon substantially comprising a vacuum deposited metal or a shape memory metal, as required by claims 27 and 28, respectively.

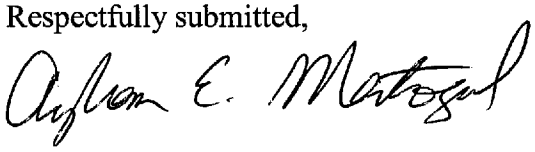
"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). MPEP § 2131. None of Beyar, Kaneko, or Macoviak discloses the above-noted elements. Therefore, independent claims 27 and 28 and claims 1, 4, 6, 7, 13, 15, and 26 dependent on claim 27 cannot be anticipated by any of the cited references and should be in immediate condition for allowance.

Fees and Deposit Account

No additional fees are believed due with this Response, however, the U.S. Patent Office is authorized to charge any underpayment of fees or credit any overpayment of fees to Deposit Account No. 18-2000 of which the undersigned is an authorized signatory.

Should the Examiner find any outstanding matters that are resolvable by telephone interview, the Examiner is invited to telephone the undersigned to discuss the same.

Respectfully submitted,



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